IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.3594 OF 2003

1) Smt.Bharti Manu Mandhora)
Aged 45 years, Occ.: Service)
R/o. Barrack No.1303, Room No.2,)
O.T. Ulhasnagar-4, Dist. Thane.)

2) Smt.Shubhangi Arvind Gadway)
Aged Adult, Occ.: Service,)
R/o. Near A-182/363, Opp. Laxmi)
Bhawan, Ulhasnagar-4, Dist. Thane.).. PETITIONERS

Versus

1) The State of Maharashtra)
through the Secretary, School)
Education Department, Mantralaya)
Mumbai 400 032.)

2) The Education Officer (Secondary))
Thane Zilla Parishad, Thane.)

3) The Chairman/Secretary)
New Education Society)
Ulhasnagar, Dist.: Thane.)

4) The Headmaster)
New English High School)
Ulhasnagar, Dist.: Thane.).. RESPONDENTS

Mr.N.V. Bandiwadekar for the Petitioners.

Mr.S.R. Nargolkar, Assistant Government Pleader,
for Respondent Nos.1 and 2.

None present for Respondent Nos.3 and 4.

**CORAM: V.G. PALSHIKAR, Ag. C.J. AND
SMT. NISHITA MHATRE, J.**

DATED: 15TH FEBRUARY 2006

ORAL JUDGMENT (PER MHATRE, J.)

. The Petitioners, who are Assistant Teachers,

have challenged the order dated 13th December 2002 granting approval to their employment as Shikshan Sevaks. It is the case of the Petitioners that their employment as Assistant Teachers had been approved earlier and, therefore, the impugned order granting them approval as Shikshan Sevaks after their transfer to the Secondary Section was bad in law.

2. Both the Petitioners were appointed as Primary School Teachers in 1979 in the school run by Respondent No.3. In the year 2002-03, some of the teachers of Standards V to VII in the Secondary Section retired and hence their posts fell vacant. The Petitioners who were Primary School teachers were entitled to be transferred and appointed to these vacant posts in accordance with the Rules applicable since they were the seniormost teachers. Respondent No.3 accordingly issued orders and appointed the Petitioners as Assistant Teachers in the Secondary Section of the School on 21st November 2002. Approval for their appointments in the appropriate pay scale was sought by the school by taking into consideration their previous experience in the Primary Section of the same school. However, on 13th December 2003, Respondent No.2 approved the employment of the Petitioners as Shikshan Sevaks for a period of three years on a consolidated amount of Rs.3,000/- per month as honorarium. Representations made to Respondent No.2,

Education Officer, were of no avail. Hence, the present Petition.

3. Undisputedly, the Petitioners were employed in the Primary Section of the school as permanent Assistant Teachers. Government had also accorded approval to the posts as well as their employment. The Government Resolution of 13th October 2000 is relied upon by the Education Officer to deny approval to the Petitioners as Assistant Teachers in the Secondary Section and according them approval as Shikshan Sevaks under the Scheme formulated by the Government. The Shikshan Sevak Scheme and the Government Resolution of 13th October 2000 cannot be made applicable to the Petitioners. Their employment in the Secondary Section is governed by the Circular dated 20th January 1987 which permits Primary School Teachers to be transferred to the Secondary Section of the school. This has been done in the Petitioners' case. The Circular still holds the field. Therefore, the stand taken by the Government to deny them the benefit of their service in the Primary Section is untenable. The Government Resolution of 13th October 2000 has no application to the employment of the Petitioners. The discharge certificate issued by the school also indicates that the Petitioners' services were transferred to the Secondary Section and, therefore, there is no question of them being approved

as Shikshan Sevaks.

4. The impugned order dated 13th December 2002 is, therefore, set aside. Respondent No.2 is directed to grant approval to the Petitioners as Assistant Teachers in Respondent No.4 school with effect from 21st November 2002. All the benefits arising out of such approval including fixation in the proper pay scale shall be granted to the Petitioners. Arrears of salary with effect from 21st November 2002 in the appropriate pay scale shall be paid to the Petitioners within a period of twelve weeks from today. Rule accordingly made absolute. No order as to costs.

(V.G. PALSHIKAR, Ag.C.J.)

(SMT.NISHITA MHATRE, J.)